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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 342nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.342/Add.1.

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The meeting was called to order at 10.05 a.m.

EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (agenda item 11) (continued)

Report on the ninth meeting of chairpersons of human rights treaty bodies (continued)

1. The CHAIRMAN invited Mr. Sørensen to continue his report on the ninth meeting of chairpersons of human rights treaty bodies which he had begun at the 320th meeting.

2. Mr. SØRENSEN said that the conclusions and recommendations submitted by the Committee to States parties following consideration of their reports was one of the elements by which the outside world assessed its work. They should therefore be drawn up with the utmost attention to detail. The general principle had been to read out the conclusions and recommendations to delegations the day after reports were considered. That meant the rapporteur and the alternate rapporteur would, on average, have 24 hours to draw up the recommendations and present them for comments at a closed meeting.

3. Mr. MAVROMMATIS noted that since certain countries would still regard that time-frame as inadequate, it should be flexible, depending on the reports and countries under consideration.

4. Mr. ZUPANČIČ noted that, although laws and legislation in most European countries were drawn up by university academics, the delegations which appeared before the Committee were not composed of people who drafted codes and laws, but rather of officials from various ministries whose main function was to maintain the established order and protect the image of the State. Possibilities of an in-depth technical dialogue between the Committee and country delegations were therefore limited. As a means of raising the level of the discussions, the Committee could ask delegations very specific legal questions, which would induce States parties to send delegations of a higher level when their subsequent periodic reports were considered.

5. In response to a remark by Mr. MAVROMMATIS concerning the composition of the delegations appearing before the Human Rights Committee, the CHAIRMAN drew the Committee's attention to rule 66 of the rules of procedure, entitled "Attendance by States parties at examination of reports".

6. Mr. SØRENSEN recalled that it had been proposed to group subjects of concern with recommendations under a single heading, as the latter were corollaries of the former.

7. Mr. CAMARA considered that while a subject of concern should indeed correspond to a recommendation, the two types of observations should not necessarily be placed under the same heading.

8. Mr. MAVROMMATIS said that he could think of some subjects of concern which would not inevitably call for a recommendation by the Committee, and that in some cases the State party alone could decide which measures were appropriate.

9. Mr. YAKOVLEV agreed that subjects of concern could be broader in scope than recommendations. Certain historical factors specific to a country could, for example, be subjects of concern without calling for a recommendation by the Committee. On the other hand, questions such as pre-trial or incommunicado detention should be the subject of specific and targeted recommendations.

10. The CHAIRMAN said that, if he understood the general trend emerging in the Committee, most members favoured maintaining two separate headings, namely, "Subjects of concern" and "Recommendations".

11. It was decided to maintain two separate headings.

12. Mr. SØRENSEN said the section on "Factors and difficulties impeding the application of the provisions of the Convention" still had to be discussed. While there was general agreement that it could be omitted in the absence of such factors or difficulties, the question had arisen on several occasions whether the Committee should refrain from mentioning certain factors so that the State party would never have the impression that the Committee, by invoking the constraints faced by the country, dispensed it from its obligations under the Convention.

13. Mr. MAVROMMATIS noted that such factors and difficulties could either be amenable to control by the State or the result of an external situation over which the State had no control.

14. Mr. CAMARA wondered whether such factors should even be referred to in the conclusions and recommendations. When considering the case of Cuba, the Committee had deemed it impossible to exonerate that country on the grounds that it had been subject to an embargo for over 30 years. Similarly, it had recently decided that it could not absolve Israel on the grounds that it was coping with acts of violence. The Committee could not, without contradicting article 2, paragraph 2, of the Convention, declare that certain factors or difficulties impeded the application of the Convention. Perhaps the most senior members of the Committee could describe the Committee's past experience of that question.

15. The CHAIRMAN pointed out that, in the past, reference to factors and difficulties impeding the application of the Convention had never involved even the slightest value judgement. The Committee had merely recognized the existence of certain circumstances, without indicating its approval or disapproval. Recognizing that a State party was confronting certain problems which it had to resolve implied no judgement whatever. Some circumstances were completely neutral, such as a country's size or a total lack of resources, which made it difficult to draw up a report; others, such as an insurrection or war, were mentioned without the matter of approval or disapproval ever being brought up, and much less invoked as a justification.

16. Mr. YAKOVLEV believed there were two types of factors which could impede the application of the Convention, namely, historical, ethnic or geographic factors over which the States had no control, on the one hand and, on the other, factors related to government policy. They should be dealt with in a different way, on the understanding that an insurrection could in no circumstances be used as an excuse for violating the Convention, any more than a state of war could suspend the absolute prohibition of war crimes.

17. Mr. EL MASRY considered that a distinction should be made between minor difficulties, and in particular those involving material or administrative problems which would affect the punctual submission of reports, and difficulties directly connected with the use of torture. In the latter case, absolute vigilance was called for.

18. The CHAIRMAN said the discussion indicated that each situation had to be tackled in a different way, on the understanding that certain factors could sometimes be legitimately invoked. The decision would probably be difficult in a few cases.

19. Mr. SØRENSEN was still of the view that, although the Committee had every right to mention certain factors which it thought impeded application of the Convention if they led to torture it was indispensable to mention that article 2, paragraph 2, of the Convention stipulated that the prohibition of torture was absolute. That was of fundamental importance.

20. The CHAIRMAN suggested, in view of the observations made, the adoption of the following guideline: apart from the few cases in which factors, such as poverty, were purely structural, most of the difficulties in question arose from instability in the State party; the Committee should therefore, while recognizing such difficulties, recall that in any event, under article 2, paragraph 2, of the Convention, the state of necessity should never be invoked to justify failure to observe the provisions of the Convention.

21. It was so decided.

22. Mr. EL MASRY pointed out that in cases where the Committee did not invoke the provisions of article 2, paragraph 2, of the Convention, it should not give the impression that it accepted the factors in question as a justification.

23. The CHAIRMAN concurred, but emphasized that only in extremely rare cases would the Committee mention difficulties without referring to article 2. He thanked Mr. Sørensen for his extremely useful report on the meeting of chairpersons of human rights treaty bodies.

24. Mr. ZUPANČIČ noted that, from a technical standpoint, it could be considered that there were a number of standard questions of importance to the Committee which were valid for all countries, regardless of their level of development, culture or legal system. One example was the 24-hour limit on police custody. A series of such standard questions relating to criminal procedure, the training of police officers and doctors, etc. could be compiled and included in a standard questionnaire to be sent to States parties in accordance with article 19. The Committee would thus have a set of

comparative criteria on the basis of which it could consider the case of each country in a broader and more objective context. The preparation of the questionnaire would, of course, be a delicate matter requiring patience and resources, but it could be regarded as a long-term exercise. It would provide the Committee with an invaluable legal tool enabling it, for example, to assert that police brutality tended to be more frequent in countries where police custody was over 48 hours. It would also provide a general picture of the situation and permit the adoption of a more rational approach.

25. The CHAIRMAN considered that suggestion extremely useful. Several years previously, Mr. Voyame, the Committee's former chairman, had, with the help of the secretariat, drawn up a series of questions of special importance to the Committee which had been sent to States parties to provide them with guidance in preparing their reports. The questionnaire would be distributed to members at the next session so that they could embark upon the process to which Mr. Zupančič had referred.

26. Mr. YAKOVLEV noted that a standard questionnaire should nonetheless leave enough leeway to cover a range of situations which was extremely diverse. A 24-hour police custody limit might not be feasible in an isolated region where it was physically impossible to refer a case to a judge within that period. Moreover, certain countries considered the assize court system to be the only one acceptable, while others preferred another type of court without jury. In short, such standard questions could never have standard answers, and each would have to be considered in the light of the system peculiar to the country under consideration.

27. The CHAIRMAN replied that the Committee must of course be realistic, and that there was no question of expecting standard replies from countries.

28. The meeting was suspended at 11.00 a.m. and resumed at 11.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Letter from Amnesty International to the Committee Chairman concerning the situation in Egypt

29. The CHAIRMAN announced that he had received a letter from Amnesty International dated 6 May 1998 in which, after referring to the recommendations made by the Committee concerning Egypt in 1994 and 1996, it reported allegations of acts of torture which had allegedly taken place since the Committee's inquiry under article 20. It requested the Committee to consider asking Egypt for a supplementary report on the measures it had taken to give effect to the Committee's recommendations following that inquiry. The Committee had at least three possibilities of reacting to the letter. It could acknowledge receipt and, in the light of the information presented, request a supplementary report from the State party. It could also decide that, owing to its workload, it would not consider the situation in Egypt until that question was included in its programme of work. Lastly, since Egypt's third periodic report was already late, rather than requesting an

additional report, the Committee could send a reminder to the Egyptian Government asking it to include replies to the questions raised by Amnesty International in its third periodic report. For his part, he was in favour of the latter solution, which was more consistent with the idea of a continuing dialogue.

30. Mr. SØRENSEN, who had taken part in the mission of inquiry on Egypt in 1996, concurred. The Committee could substantiate its request by pointing out to the Egyptian authorities that it had adopted new guidelines for the preparation of reports of action taken on recommendations made under article 19. In the case of Egypt, it could expand its request and ask for information in respect of the recommendations made under article 20, since they had been published in the Committee's annual report to the General Assembly.

31. The CHAIRMAN added that he could append a copy of Amnesty International's letter to the one he would send to the Egyptian Government, as suggested by Mr. Sørensen, and request the Government's observations on the allegations it contained.

32. Mr. CAMARA believed the Chairman could also request in his letter, in application of rule 66 of the rules of procedure, that the delegation presenting the report to the Committee should consist of specialists with experience in the subjects addressed, so as to ensure that it could reply with precision to the Committee's questions.

33. The CHAIRMAN said that he could indeed make that request after describing the Committee's new guidelines.

34. Mr. MAVROMMATIS asked whether the Committee would be kept informed of the reaction to the letter.

35. The CHAIRMAN confirmed that it would be. If there was no objection, he would take it that the Committee wished him to send a letter to the Egyptian Government as agreed.

36. It was so decided.

The public part of the meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

Information concerning Israel

37. Mr. EL MASRY reminded the Committee that it had been informed, by a press release issued by a Palestinian non-governmental human rights organization, that a person who had admitted killing two Palestinian detainees while working for the Israeli security services, and who had been granted a presidential pardon for his act, had recently been appointed deputy adviser to the Israeli Prime Minister on anti-terrorist matters. The non-governmental organization considered that his appointment to that position was tantamount to legitimizing extrajudiciary executions. He would like the Committee to determine whether that information should be forwarded to the State party, together with a request for its observations.

38. Mr. GONZÁLEZ POBLETE considered that there was no provision of the Convention that authorized the Committee to make such a request of a State party. It would amount to challenging a decision by the national authorities which had nothing to do with the application of the Convention, and would thus constitute interference in the internal affairs of the State.

39. Mr. MAVROMMATIS, while acknowledging that the matter was very serious, considered that the Committee, had it wished to do so, should have raised it during the consideration of the second periodic report of Israel, which it had just completed.

40. Mr. SØRENSEN agreed, and added that since no member had raised the question during the consideration of the second periodic report of Israel just a few days earlier, the Committee could not, at the present stage, send a verbal or written communication on the subject to the State party.

41. The CHAIRMAN said he took it that the members of the Committee considered that the question should be left in abeyance for the time being, even if that meant raising it during consideration of Israel's next periodic report.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

42. Mr. EL MASRY, referring to the difficulties raised by the Committee's present procedures which consisted in adopting recommendations and conclusions on the reports submitted by States parties immediately after their consideration, proposed that the recommendations should be adopted at the end of the session, so that Committee members could study the texts in detail once they had been typed and translated into the various working languages.

43. Furthermore, some delegations had complained that the Committee's procedure left them only a few hours to prepare replies to the numerous questions that were posed. Would it be possible for Committee members, through the secretariat, to submit in advance the questions they intended to raise with the States parties whose reports were under consideration, so that the States would have sufficient time to reply in detail?

44. The CHAIRMAN noted, with respect to the second suggestion, that the Committee had already considered a solution of that nature which it had rejected because of the practical problems it would raise. Concerning Mr. El Masry's first proposal, he recalled that the Committee had decided that recommendations and conclusions would in general be studied and adopted the day after the reports were considered. He suggested that the Committee should follow that procedure on a trial basis before considering other solutions.

45. Replying to a question from Mr. EL MASRY, Mr. BRUNI (Secretary of the Committee) indicated that 24 hours would suffice to type up handwritten recommendations and conclusions, but that it would take at least 3 or 4 days to translate them.

46. Mr. SØRENSEN feared that deferring the consideration of recommendations and conclusions to the end of the session could lead to omissions and confusion, and was in favour of maintaining the present procedure.

47. Following an exchange of views between Mr. GONZÁLEZ POBLETE, Mr. MAVROMMATIS and Mr. EL MASRY, the CHAIRMAN said that in future a 48-hour period would elapse between the oral presentation of a State party's report and the Committee's consideration of its recommendations and conclusions on the report.

The meeting rose at 12.25 p.m.